

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
I.D # 2919
RESOLUTION E-3852
December 4, 2003

R E S O L U T I O N

Resolution E-3852. Pacific Gas and Electric Company (PG&E) request to reimburse the California Department of Water Resources (DWR) for payments for PG&E's renewable transitional procurement contracts on a monthly basis for actual costs incurred. Denied.

By Advice Letter 2354-E, filed on March 10, 2003.

SUMMARY

PG&E requests Commission authorization to reimburse DWR on a monthly basis for actual costs incurred by DWR for the renewable transitional procurement contracts (Interim Contracts) approved by the Commission in Resolution E-3805. This resolution denies PG&E's request, finding that PG&E is currently bound by the terms of its Operating Order and Operating Agreement with DWR for the remittance of Power Charges associated with the Interim Contracts.

BACKGROUND

PG&E filed Advice Letter (AL) 2354-E on March 10, 2003 requesting Commission authorization to reimburse DWR on a monthly basis for the actual costs incurred by DWR for the Interim Contracts approved December 19, 2002 under Resolution E-3805 (AL 2303-E).

Decision (D.) 02-08-071 authorized PG&E and Southern California Edison Company (SCE) to enter into procurement contracts with credit support provided by DWR between the effective date of the decision, August 22, 2002, and January 1, 2003. PG&E submitted several renewable procurement contracts under AL 2303-E filed on November 15, 2002, stating that until it regains its investment-grade credit rating and is able to assume all rights and obligations as specified under each contract, DWR will serve as the creditworthy purchaser for the products received. Under the decision adopting DWR's 2003 Revenue Requirement, D.02-12-045, Ordering Paragraph (OP) 14 ordered that "(a)ny DWR 2003 revenue requirement pertaining to

power contracts entered into by DWR between August 22, 2002 and January 1, 2003 (pursuant to D.02-08-071) shall be allocated to the customers of the utility entering the relevant contract.”

Resolution E-3805 states that “(u)nder the terms of the proposed contracts, DWR will be the creditworthy purchaser of the contracts and the costs of the contracts will be recovered by DWR through its remittance rate when they are included in DWR’s revenue requirement” (Res. E-3805, mimeo page 14).

NOTICE

Notice of AL 2354-E was made by publication in the Commission’s Daily Calendar. PG&E also served public, redacted copies of the advice letter to interested parties according to Section III Paragraph G, of General Order 96-A and to service list parties in docket A. 00-11-038.

PROTESTS

DWR filed a protest to AL 2354-E on April 1, 2003 and on April 25 submitted a reply to PG&E’s April 8, 2003 response to the April 1 protest. DWR argues that PG&E seeks to modify the remittance rate for DWR-delivered energy in PG&E’s service territory under contracts for which DWR currently serves as the creditworthy purchaser and that the established power charge applies to the Interim Contracts. DWR alleges that PG&E’s advice letter is procedurally flawed and, if approved, would violate applicable law and create administrative burdens on DWR. In reply to PG&E’s April 8 response, DWR submits additional arguments, citing that the relief sought by PG&E under AL 2354-E directly contradicts the PG&E-DWR Operating Agreement approved by Decision 03-04-029 and executed by PG&E and DWR on April 17, 2003, and also would contravene provisions of the Operating Order applicable to PG&E adopted by D.02-12-069, PG&E 2003 Servicing Order, Attachment B.

PG&E responded to DWR’s April 1 protest and April 25 reply on April 8 and May 2, 2003, respectively. PG&E argues that DWR is wrong in claiming that the remittance rate should be used for the power purchased under the Interim Contracts, citing that the DWR 2003 Revenue Requirement decision (D.02-12-052) did not account for these costs or for the generation supplied to PG&E ratepayers. PG&E also states that the remittance methodology in the Servicing Order cited by DWR has never been modified to address the Interim Contracts and, therefore, does not govern this issue.

DISCUSSION

PG&E's proposal to submit to DWR monthly actual costs for the Interim Contracts was made on March 10, 2003, in advance of its Operating Agreement with DWR (executed April 17, 2003), and in advance of the 2003 DWR Supplemental Revenue Requirement (submitted to the Commission on July 1, 2003, and addressed in D.03-09-018). The proposal recognized that the 2003 DWR Revenue Requirement (submitted in August 2002) did not reflect the Interim Contracts signed between August and December 2002. The proposal also recognized that the Commission had directed that the particular costs and generation associated with these contracts should be directly assigned to the utility involved (D.02-12-052). Finally, the proposal recognized Resolution E-3805 which stated that "(u)nder the terms of the proposed contracts, DWR will be the creditworthy purchaser of the contracts and the costs of the contracts will be recovered by DWR through its remittance rate when they are included in DWR's revenue requirement" (Res. E-3805, mimeo page 14).

However, PG&E also had an existing Operating Order, issued under D.02-12-069 on December 19, 2002, which recognized the Interim Contracts and, as such, obligated PG&E to "remit DWR Revenues to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the Servicing Arrangement" (Operating Order, Article IV, Section 4.01 (c)).

Exhibit C outlines a formula enabling the separation of generation provided by both DWR and PG&E for surplus sales and for retail sales under the combined portfolio. The percentage of DWR generation sold to retail end use customers is multiplied by the remittance rate and the resulting amount is submitted to DWR. The Operating Agreement between DWR and PG&E, executed on April 17, 2003, contains changes to Section 4.01 and Exhibit C, but these changes do not affect the outcome. No side calculation is made under either the Operating Order's or the Operating Agreement's Exhibit C to separate the allocated long-term DWR contracts from the Interim Contracts' costs and generation.

The remittance rate adopted under the 2003 DWR Revenue Requirement did not account for the generation or costs of the Interim Contracts. Applying the Exhibit C formula to this generation counts it as DWR-related generation, and the resulting percentage multiplied by the remittance rate produces an over-remittance to DWR. Using this remittance rate causes PG&E ratepayers to pay more than twice the actual costs of the generation provided under the Interim Contracts. In contrast, the

Supplemental 2003 DWR revenue requirement does account for the generation and costs of the Interim Contracts, but because these elements are not separately accounted for by DWR, all California customers pay for the PG&E Interim Contracts. No other interim contracts signed by other utilities relied on DWR as the creditworthy buyer. The annual value of the PG&E Interim Contracts is estimated to be \$53 million.

Payments and Charges

Energy Division requested PG&E to provide information on what generation and payments it has been making to DWR regarding the Interim Contracts. In a confidential response, PG&E accounts for the amounts paid to DWR from January through July 2003. PG&E's remittance has been monthly, based on the interim contract costs, not the DWR Remittance Rate. Separately, PG&E also provides confidential information requested by Energy Division, identifying DWR's inclusion of the annual generation and estimated revenue requirements resulting from the PG&E Interim Contracts in the DWR Supplemental 2003 Revenue Requirement, submitted to the Commission in July 2003. DWR did not develop a separate calculation for the PG&E Interim Contracts, and as a result, the new remittance rate for each utility now incorporates the PG&E Interim Contracts. This means that other utility retail customers are subsidizing PG&E retail customers for the Interim Contracts. Meanwhile, PG&E's customers are paying a lesser charge than would otherwise be the case. Also, if PG&E is still following its existing method of remitting monthly actual costs for the Interim Contracts, PG&E customers are also paying the actual costs of the Interim Contracts to DWR on a monthly basis.

Over Remittances

Resolving the payment issues requires adjustments affecting the Operating Order, the Operating Agreement and the DWR 2003 Revenue Requirement and the DWR 2003 Supplemental Revenue Requirement. An advice letter cannot resolve all the changes necessary to address the appropriate adjustments. Given the complexity and timing of these issues, Energy Division recommends the following procedure. The PG&E remittance rate(s) must be applied to this generation to conform to the Operating Order and the Operating Agreement. PG&E should recalculate the difference between the revenues submitted to DWR to date and the total amount due using the remittance rates stemming from the 2003 DWR Revenue Requirement and the 2003 Supplemental Revenue Requirement. PG&E should pay DWR this difference immediately, but should also track these amounts for a future adjustment. It is not clear whether the issues surrounding these interim contracts will only apply to the 2003 calendar year, or will continue into future years. PG&E should work with DWR to renegotiate its Operating Agreement to incorporate an acceptable

solution to account for the interim contracts and their costs. Also, DWR should develop a separate utility-specific calculation in any future revenue requirement submissions to the Commission for any contracts it has signed on behalf of a particular utility so that utility ratepayers are unharmed. Lastly, SCE and SDG&E may petition to modify D.03-09-018 to adjust their respective Power Charges so that only PG&E customers pay for the PG&E interim contracts.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Sections 311(g)(2) and 311(g)(3) provide that this 30-day period may be reduced or waived under certain circumstances.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and was placed on the Commission's agenda no earlier than 30 days from the day it was mailed. Comments were filed by _____ on _____.

FINDINGS

1. PG&E has been paying DWR the actual monthly costs of the Interim Contracts approved under Resolution E-3805.
2. The 2003 DWR Revenue Requirement approved by D.02-12-045 did not account for the Interim Contracts.
3. Resolution E-3805 advised that when the costs of the Interim Contracts are included in DWR's revenue requirement, DWR would recover these contract costs through the remittance rate.
4. PG&E had an Operating Order approved by D. 02-12-069, which recognized the Interim Contracts and obligated PG&E to include the generation from the contracts as DWR-related generation under the formula of Exhibit C for Surplus Sales and Remittances.
5. PG&E and DWR executed an Operating Agreement on April 17, 2003, adopted under D.03-04-029 and similar to the Operating Order, which did not materially change the formula used for determining the generation quantities applied to remittances of Power Charges.

6. The DWR 2003 Supplemental Revenue Requirement approved by D. 03-09-018 includes the PG&E Interim Contracts but allocates the costs of these contracts to all California ratepayers.
7. No other utility has executed interim contracts where DWR is the creditworthy buyer.
8. The annual estimated value of the PG&E Interim Contracts is \$53 million.
9. PG&E should pay DWR for the Interim Contract generation using the applicable remittance rate for the Power Charges established under the DWR 2003 Revenue Requirement and the DWR 2003 Supplemental Revenue Requirement.
10. PG&E should track the difference between the revenues submitted to DWR to date and, separately, the total amount due using the remittance rates stemming from the 2003 DWR Revenue Requirement and the 2003 DWR Supplemental Revenue Requirement for a future adjustment.
11. PG&E should work with DWR to renegotiate its Operating Agreement to incorporate an acceptable solution to account for the interim contracts and their costs.
12. SDG&E and SCE may petition to modify D.03-09-018 to adjust their respective Power Charges adopted under D.03-09-018, so that only PG&E customers pay for the PG&E interim contracts.
13. DWR should develop a methodology to separate utility-specific costs in any future revenue requirement submissions to the Commission for any contracts it has signed on behalf of a particular utility.
14. PG&E's request under Advice Letter 2354-E should be denied.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company shall recalculate the total revenues due to the Department of Water Resources for the Interim Contracts using the remittance rate for the Power Charges adopted under the 2003 Revenue Requirement and the 2003

Supplemental Revenue Requirement, shall deduct from this an amount equal to what has been paid, and shall remit the difference to DWR immediately.

2. Pacific Gas and Electric Company shall continue to count the power from the Interim Contracts as DWR-related power and shall apply the resulting percentage to remittance rate for Power Charges until DWR relinquishes the contracts to PG&E.
3. Pacific Gas and Electric Company Advice Letter 2354-E is denied.
4. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 4, 2003, the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director